

In the Matter of Jacqueline Gonzalez, Passaic County
CSC Docket No. 2012-687
(Civil Service Commission, decided January 25, 2012)

Passaic County requests that Jacqueline Gonzalez, an Employee Benefits Clerk, be transferred from the Administrator's Department to the Finance Department.

By way of background, Yvette Blair, Cheryl Jubinsky, and Rose Butler were laid off from their positions of Clerk 1 on March 14, 2008, July 19, 2008 and April 10, 2009, respectively. A Clerk 1 has a lateral title right to Employee Benefits Clerk. As such, the laid off employees appear on a special reemployment list (SRL) for Employee Benefits Clerk in the following order: Butler, Jubinsky, and Blair. They have permanent appointment dates of August 13, 2001, October 31, 2005, and April 24, 2006, respectively. With regard to Gonzalez, she was permanently appointed as an Employee Benefits Clerk in the Administrator's Department effective November 10, 2003.

The appointing authority requests that Gonzalez be transferred to the Finance Department despite the existence of the SRL for Employee Benefits Clerk. It argues that the Clerk 1 title is a noncompetitive title and should not have lateral title rights to the competitive title of Employee Benefits Clerk. It also maintains that the position of Employee Benefits Clerk is a skilled position. In Gonzalez's case, the appointing authority submits that Gonzalez possesses extensive experience in managing its Disability Insurance Fund and has also assisted in the Retiree Program. Gonzalez's skills are needed in the Pension Division of the Finance Department. Furthermore, the appointing authority contends that, due to the current economic state, it should not be required to incur an additional cost to its budget by appointing another employee to perform the duties that Gonzalez can perform. Therefore, it requests that *N.J.A.C. 4A:8-2.3(b)2* be relaxed in order for it to transfer Gonzalez notwithstanding the existence of the SRL.

The Division of State and Local Operations (SLO) supports the appointing authority's request. It also confirms that a Clerk 1 has a lateral title right to Employee Benefits Clerk. It is noted that an Employee Benefits Clerk also has a lateral title right to Clerk 1. The job specification for Clerk 1 states that an employee serving in this title, under close supervision, performs routine, repetitive clerical work involving the processing of documents in a variety of functions; and does other related duties as required. The job specification for Employee Benefits Clerk states that an employee serving in this title, under direction, performs varied clerical work of limited complexity involved in the processing of enrollments, adjustments, terminations, and additions for employee insurance, hospitalization, benefits, and pension plans; and does other related duties as required. Both titles

are in the same clerical occupational group and family, having no education or experience requirements.

CONCLUSION

N.J.A.C. 4A:8-2.3(b)2 provides that employees on SRLs have priority in appointments over transfers. Specifically, the regulation states that SRLs shall take priority over noncompetitive appointments, transfers except appointments pursuant to *N.J.A.C.* 4A:8-1.6(f)1, and all lateral title changes except those resulting from position reclassification within a layoff unit. Moreover, a review of the regulatory history of *N.J.A.C.* 4A:8-2.3 reveals that this rule was enacted to reiterate the priority of SRLs over other employment lists as reflected in *N.J.S.A.* 11A:4-12. *N.J.A.C.* 4A:8-2.3(b)2 is an extension of that statutory mandate. Further, although transfers are contemplated in pre-layoff actions, once an employee is laid off, he or she must be afforded the highest priority in appointments as provided by law and rule. Nonetheless, since *N.J.S.A.* 11A:4-12 only addresses the priority of the SRL over other eligible lists and not transfers, and *N.J.A.C.* 4A:8-2.3(b)2 is a rule and not a statute, an appointing authority may petition for a rule relaxation pursuant to *N.J.A.C.* 4A:1-1.2(c), which states that the Commission may relax a rule for good cause in order to effectuate the purposes of Title 11A, New Jersey Statutes.

Moreover, *N.J.A.C.* 4A:8-2.1(c) provides that a special reemployment right means the right of a permanent employee, based on his or her permanent title at the time of the layoff action, to be certified for reappointment after the layoff action to the same, lateral and lower related titles. Special reemployment rights shall be determined by this agency in the same manner as lateral and demotional rights. *See also*, *N.J.A.C.* 4A:8-2.3(a). Additionally, *N.J.S.A.* 11A:8-1(e) provides that:

For purposes of determining lateral title rights in State and political subdivision service, title comparability shall be determined by the [C]ommission based upon whether the: (1) titles have substantially similar duties and responsibilities; (2) education and experience requirements for the titles are identical or similar; (3) employees in an affected title, with minimal training and orientation, could perform the duties of the designated title by virtue of having qualified for the affected title; and (4) special skills, licenses, certifications or registration requirements for the designated title are similar and do not exceed those which are mandatory for the affected title. Demotional title rights shall be determined by the [C]ommission based upon the same criteria, except that the demotional title shall have lower but substantially similar duties and responsibilities as the affected title. *See also*, *N.J.A.C.* 4A:8-2.1(a) and (b).

In the instant matter, the appointing authority argues that a Clerk 1 should not have a special reemployment right to an Employee Benefits Clerk position. However, based on the established criteria for title comparability as indicated above, it has properly been determined that an Employee Benefits Clerk and Clerk 1 have lateral title rights to one another. In that regard, an Employee Benefits Clerk and Clerk 1 have substantially similar duties and responsibilities in that the primary focus of their duties is clerical. They also have no educational and experience requirements or special skills or licenses. Therefore, the Commission finds that the three laid off employees in this matter who served as Clerks 1 have been correctly placed on the special reemployment list for Employee Benefits Clerk.

Nonetheless, the appointing authority requests that Gonzalez be transferred to the Finance Department despite the existence of the SRL for Employee Benefits Clerk. It contends that, due to the current economic state, it should not be burdened by the additional cost of appointing another employee to perform the duties that Gonzalez can perform. Additionally, the appointing authority submits that Gonzalez possesses extensive experience and specific skills which are needed in the Pension Division of its Finance Department. Under these circumstances, the appointing authority has presented budgetary constraints in hiring another individual and has shown a specific need to fill a position with an already skilled employee. Further, there does not appear to be a circumvention of layoff rights of the employees on the SRL, as their layoffs occurred in 2008 and 2009, which were not recent. Therefore, good cause has been shown to relax the provisions of *N.J.A.C.* 4A:8-2.3(b)2 and authorize the transfer of Gonzalez from the Administrator's Department to Finance Department.

ORDER

Therefore, it is ordered that this request be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.